SUPREME COURT

OF THE STATE OF WASHINGTON

ORIGINAL

SARA D. SPAIN,

Petitioner,

vs.

EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF WASHINGTON,

Respondent.

Consolidated Supreme Court

Cause No. 79878-8

SUPPLEMENTAL BRIEF OF PETITIONER SARA D. SPAIN

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I. INTRODUCTION

Petitioner Sara D. Spain applied for unemployment benefits after quitting her job due to an abusive employer. The Employment Security Department (ESD) denied her benefits.

The Thurston County Superior Court reversed the ESD and held that the list of "good cause" reasons for quitting one's job and qualifying for unemployment benefits under RCW 50.20.050(2) was not an exhaustive list. Division II of the Court of Appeals reversed the superior court and affirmed the ESD's denial of benefits based entirely on that Division's decision in *Starr v. Employment Security Department,* 130 Wn. App. 541, 123 P.3d 513 (2005), *rev. denied,* 157 Wn.2d 1019 (2006), which held that the list was exhaustive.

This Court granted review of Ms. Spain's case and consolidated it with *Batey v. ESD* (No. 80309-9), under the joint cause number 79878-8, in an order dated January 9, 2008. In that order this Court directed the parties to file supplemental briefing addressing *City of Fircrest v. Jensen*, 158 Wn.2d 384, 143 P.3d 776 (2006), *cert. denied,* 127 S. Ct. 1382 (2007).

II. CITATION TO COURT OF APPEALS DECISION

Division II of the Court of Appeals filed a decision on the merits of Ms. Spain's appeal on February 7, 2007, in *Sara D. Spain v. State of Washington, Employment Security Department,* Court of Appeals Cause No. 33705-3-II. A copy of the decision is attached to this Petition as Appendix ("App.") A.

III. ISSUES PRESENTED ON CONSOLIDATION

A. Should Ms. Spain be granted benefits under the Employment Security Act (ESA) because under *Batey* the voluntary quit provisions that apply to her case are those provisions applicable prior to the 2003 amendments to the ESA that *Batey* correctly held to be unconstitutional?

B. Should Ms. Spain be granted benefits when, prior to the amendments in 2003 to the voluntary quit provisions of the ESA, employees such as Ms. Spain were eligible for benefits when they quit their jobs because of abusive employment situations?

C. Was the trial court correct in awarding Ms. Spain benefits and deciding that the amendments made in 2003 did not restrict the list of "good cause" reasons for voluntarily quitting one's job to the ten reasons stated in the amendments?

IV. STATEMENT OF THE CASE

A. Substantive Facts: Job Separation[1]

Sara Spain worked for Peterson Northwest, Inc. CP Comm. Rec. 53.[2] She quit in June 2004, according to the Administrative Law Judge's Findings of Fact, "because of the way the president of the company, Bryan Peterson, treated her." CP Comm. Rec. 8, 46-47.

Ms. Spain testified about many incidents in which she and her coworkers were abused by their employer, including this one:

> [T]he guys had done some work on a roof and it wasn't to his [the owner's] standard, and so he made everybody in the office go stand out in the freezing cold for like three hours while he just went off on us.
>
> * * *
>
> It was freezing. It was like starting to rain. And I'm not sure, I think he was even going I hope it does rain so you guys can get soaked and miserable. He says I don't give a shit what you guys, how you guys feel, he doesn't care.

CP Comm. Rec. 21.

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[1] What follows is an abbreviated statement of facts; a fuller recitation may be found in Ms. Spain's petition for review and her opening brief filed with the Court of Appeals.

[2] The Commissioner's Record is the sole record for review in this matter but it is paginated separately from the rest of the Clerk's Papers; the Commissioner's Record therefore will be referenced as "CP Comm. Rec." followed by the page as it is referenced in the original Commissioner's Record.

B. Procedural History

The ESD denied benefits on July 21, 2004. CP Comm. Rec. 32. Ms. Spain appealed and after the appeals hearing, an ALJ, though denying benefits, made the following findings of fact:

- Ms. Spain and other employees were called "retards" by the owner; she was berated for being too slow;
- she and other employees were faced with verbal, often profane, abuse from the owner;
- she and other employees witnessed the owner throwing and kicking inanimate objects on a weekly basis;
- she and other employees were forced to stand out in the "freezing cold" and rain for approximately "three hours" one day and were told by the owner that he hoped they "got soaked" and that he "did not care how they felt";
- she was called by the owner who was stuck in a traffic jam and he told her that had she joined him on the trip he could have been in the carpool lane and he demanded that she find him the fastest way to his destination;
- she was further yelled at and abused when she told the owner that an employee's pay check had not cleared and the owner became angry because he had told Ms. Spain earlier that same day that the business was "in the red";
- she spoke to the owner and told him she did not like the way she was being treated and he promised to change his behavior but did not.

CP Comm. Rec. 47 (Findings of Fact 3, 4, 5, 6, 7).

The ESD and the ALJ denied Ms. Spain benefits because, according to the ESD, Ms. Spain had quit without "good cause" under the newly amended statute:

> ***Although claimant's employer treated her in an unprofessional, demeaning and unjustified manner,*** *based on the specific enumerated provisions above [of the Employment Security Act]* ***these actions do not constitute good cause for quitting.***

CP Comm. Rec. 49 (emphasis added). The Commissioner affirmed, ruling that Ms. Spain's reason for quitting failed to fit within one of the ten specified reasons for "good cause" under the newly amended Act. CP Comm. Rec. 62; 32 (ESD decision); 49, 51 (ALJ decision); 62-63 (Commissioner's Order).

On Ms. Spain's appeal for judicial review, the Honorable Paula Casey, Judge of the Thurston County Superior Court, reversed the commissioner's order, holding that the list of "good cause" quits was not an exclusive list. App. B.

When the ESD appealed the Superior Court's decision, arguing that the list of "good causes" was indeed exhaustive, Division II agreed and reversed the trial court: "This court considered these arguments in *Starr v. Employment Sec. Dep't* and determined that ... RCW 50.20.050(2)(b)(i)-(x) does, in fact, provide the exclusive list of non-disqualifying good cause reasons for

quitting employment." *Spain v. ESD,* unpublished slip opinion at 2 (attached to this brief as App. A).

This Court granted review and consolidated Ms. Spain's case with *Batey v. ESD,* under the joint cause number 79878-8, in an order dated January 9, 2008. In that order this Court directed the parties to file supplemental briefing addressing *City of Fircrest v. Jensen*, 158 Wn.2d 384, 143 P.3d 776 (2006), *cert. denied,* 127 S. Ct. 1382 (2007).

V. ARGUMENT

A. MS. SPAIN SHOULD BE GRANTED UNEMPLOYMENT BENEFITS BECAUSE THE COURT OF APPEALS DENIED BENEFITS PREMISED ON VOLUNTARY QUIT PROVISIONS THAT WERE CORRECTLY FOUND UNCONSTITUTIONAL IN *BATEY v. ESD.*

A claimant like Ms. Spain, who quits a job because of an abusive employer, has historically been granted unemployment benefits under the Employment Security Act – at least up until 2004. Only after the 2003 amendments[3] were enacted were abused employees barred from unemployment benefits when the ESD and some courts interpreted those amendments as providing

[3] For brevity the phrase "the 2003 amendments" will refer here to the revisions to the voluntary quit provisions of the Employment Security Act that were enacted in 2003 to be effective for claims filed after January 4, 2004. They were originally enacted as Laws of 2003, 2d Spec. Sess., ch. 4, § 1 (enacting 2ESB 6097).

an exclusive and exhaustive list of "good cause" quits, a list that does not include "good cause" for quitting due to abusive employers. *Starr v. Employment Security Department,* 130 Wn. App. 541, 123 P.3d 513 (2005), *rev. denied,* 157 Wn.2d 1019 (2006).

Those 2003 amendments, however, have been subsequently – and correctly – found unconstitutional by Division I in *Batey v. Employment Security Department*, 137 Wn. App. 506, 154 P.3d 266 (2007), *rev. granted* __ Wn.2d __ (Jan. 9, 2008). Therefore, Ms. Spain should be entitled to unemployment benefits under the provisions of the ESA as it was historically interpreted *prior to the 2003 amendments*, as is argued further in section "B" below. This result, however, would require that this Court affirm *Batey* as Ms. Spain argues it should for the following reasons.

The 2003 amendments that contributed to the denial of benefits to Ms. Spain were enacted as EHB 3278, a bill with a narrative title and a numerical cross-reference that stated, "AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity; reenacting RCW 50.20.050; and creating a new section." This title failed to state the subject of the bill as correctly held in *Batey.*

The original 3278, first read in the House on January 31, 2006, as HB 3278, was entitled, "AN ACT Relating to making adjustments in the unemployment insurance system to enhance ***benefit and tax equity***; and creating a new section." (Attached as App. C to this brief).[4] The content of that bill was one paragraph stating the legislature's intent to "make adjustments to ***benefit and tax equity*** that ensure both the stability and solvency of the system." *Id.* Thus, the content or subject of the bill was directly reflected – *verbatim* - in the title of the bill.

If the title of 3278 stated the "subject" of the bill at all, it must have stated the subject of this first bill to which it was attached, particularly because the title quoted words that were stated in the bill itself; but the content of that bill changed twice, drastically the second time, and the final bill contained **nothing** that was in the initial bill – except the title of the bill - which never changed.

On February 14, 2006, after the legislatively-created Joint Legislative Task Force on Unemployment Insurance Benefit Equity

[4] This bill, the original 3278, may have been a placeholder for recommendations that were anticipated to be issued by the Joint Legislative Task Force on Unemployment Insurance Benefit Equity, which was created in 2005 in EHB 2005 in the wake of the controversy resulting from the 2003 amendments. The Task Force's work plan anticipated completing a report by December 14, 2005. http://www.leg.wa.gov/documents/joint/uitf/workplan.pdf. The Task Force, however, did not meet its deadline and so 3278 was amended as noted later in this brief to allow the task force more time.

failed to meet its reporting deadline, the House amended HB 3278, and stated that the amendment would "[s]trike everything after the enacting clause . . . ." H. Amend. 939 (Attached as App. D). HB 3278 then passed the House and became Engrossed House Bill 3278 and the language that had been substituted for the language that had been stricken from the original bill provided that "the joint legislative task force on unemployment insurance benefit equity" would have an additional two months to report on its findings. See EHB 3278 (Attached as App. E).

EHB 3278, however, retained the narrative portion of the title from the previous version of 3278, but inserted after the title a numerical reference to the uncodified bill being amended: "AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefits and tax equity; amending 2005 c 133 s 9 (uncodified); and creating a new section." *Id.*

Thus, the content – what 3278 was "about" – its subject, had changed, though the body of the bill still used the words "benefit equity"; the narrative title, however, stayed the same. But the Legislature was not finished with 3278.

When the bill reached the Senate, two senators introduced an amendment, S. Amend. 365, which was adopted on March 3,

2006. This amendment also stated that it would "[s]trike everything after the enacting clause and insert the following . . . " What followed, however, was nothing resembling the prior two incarnations of 3278, but instead, three pages reenacting the voluntary quit provisions enacted in 2003 that dramatically altered RCW 50.20.050. S. Amend. 365 (Attached as App. F).

This amendment again retained the narrative portion of the title of 3278, but inserted a reference to the codified statute being amended to read as follows: "AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity; reenacting RCW 50.20.050; and creating a new section." *Id.*

On the same day as the Senate's amendment, March 3, 2006, both the House and Senate passed EHB 3278 as amended by the Senate and the Governor signed the bill 5 days later. See Laws of 2006, ch. 12, § 1 (EHB 3278) (Attached as App. G).

But the content - what 3278 was "about" – its subject, had been completely changed, though the narrative portion of its title was kept exactly as it had been when it had begun its life several months before: "AN ACT Relating to making adjustments in the

unemployment insurance system to enhance benefit and tax equity; . . ." Laws of 2006, ch. 12, § 1 (EHB 3278) (See App. G).

Thus, if the title "relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity" had meant anything, it pertained to the first, and perhaps the second, HB 3278 originally introduced in January 2006. The title repeated language *verbatim* from the bill itself; that the bill's subject completely changed – but its title did not – by the time the bill was finally passed in March 2006, demonstrates that the title no longer reflected the subject of the bill.[5]

Thus, *Batey* was correct that the title of the bill for amendments made to the ESA in EHB 3278 violated the subject-in-title requirement of Art. II, § 9 of the Washington Constitution.

The title of the Act did not provide adequate notice of the subject of the Act to claimants such as Ms. Spain or to counsel who typically represent these claimants, for instance, the Unemployment Law Project. The title, "AN ACT Relating to making adjustments in

[5] Given the indisputable and extensive legislative history detailed above, the Legislature's current claim in its brief filed here, that the title of EHB 3278 adequately stated the subject of the legislation is, at best, implausible and lacking in candor. Further, the Legislature's claim that legislative history – now that it is readily available to the public on the internet – cannot be considered in analyzing challenges under Art. II, § 19, misstates and too broadly applies the enrolled bill rule or doctrine as counsel for *Batey* has argued in its brief; that argument is incorporated by reference here as permitted under RAP 10.1(g)(2).

the unemployment insurance system to enhance tax and benefit equity" gave no indication that the Act would establish a finite, exclusive list of ten "good cause" quits or that the Act would eliminate any discretionary power of the Commissioner to decide what constituted "good cause" to quit one's job.

Thus, just as Division I stated in *Batey*, the title of the Act was not adequate because it failed to provide notice to those likely impacted by the legislation:

> Employees – a group particularly affected by EHB 3278 – *would not reasonably be expected to recognize this phrase as a signal that legislators had decided to change the good cause criteria for voluntary quits.*

Batey, 137 Wn. App. at 513 (emphasis added). Division I was also correct that the "'mere reference' to a section in the title of an act does not state a subject." *Id.* at 514.

In this, the *Batey* court was consistent with the numerical majority – albeit not the prevailing plurality - of this Court in *City of Fircrest v. Jensen*, 158 Wn.2d 384, 143 P.3d 776 (2006), *cert. denied,* 127 S. Ct. 1382 (2007).

Justice Owens' concurring opinion in *Fircrest*, in which two other justices joined, stated the matter most succinctly:

> [T]he weight of our case law has adhered to two principles contrary to the *St. Paul* rule: that, for purposes of a subject-

> in-title challenge to an amendatory act, the relevant title is the title of the amendatory act and the amendatory act's title ***must do more than point to the act being amended***.

Fircrest, 158 Wn.2d at 407- 408 (Owens, J., concurring) (emphasis added).

The two dissenting justices in *Fircrest* agreed with the three concurring justices on this point:

> "'Our analysis [in subject-in-title challenges] must focus on the *narrative description of the bill*, and not on the 'ministerial recital of [its] sections.' [citation omitted]. '[A] mere reference to a section in the title of act does not state a subject.'"

Fircrest, 158 Wn.2d at 414 (Sanders, J., dissenting) (emphasis added). Moreover, Justice Sanders re-emphasized that a mere citation to a statute does not save an otherwise unconstitutional title: "[I]ncluding the recitation of the statutory provisions affected as part of its title . . . runs afoul of the rule that constitutional inquiries focus solely on the narrative description of the act." *Fircrest,* 158 Wn.2d at 417 (Sanders, J., dissenting).

Thus, five justices in *Fircrest* opined that it is the title of the amendatory act that is to be examined in subject-in-title challenges, that *the narrative description of the act preceding the semi-colon is what is to be examined*, and that *mere reference to a statutory citation does not state a "subject"* for purposes of subject-in-title

Constitutional requirements. *Fircrest,* 158 Wn.2d at 407 – 408 (Owens, J., concurring); 158 Wn.2d at 414, 417 (Sanders, J., dissenting).

Ms. Spain therefore respectfully requests that this court affirm *Batey* because it was correct in ruling that the 2003 amendments to the voluntary quit provisions violated the subject-in-title requirement of the Washington Constitution, a conclusion consistent with the numerical majority's analysis in *Fircrest.*

B. MS. SPAIN SHOULD RECEIVE BENEFITS BECAUSE *BATEY* RESTORES THE PRE-2004 VOLUNTARY QUIT PROVISIONS UNDER WHICH "GOOD CAUSE" COULD BE INTERPRETED TO INCLUDE LEAVING ABUSIVE EMPLOYERS.

Ms. Spain gave extensive testimony, as detailed above, about the abusive work environment at Peterson Northwest, Inc. She was called names, she was cursed at, and she had to witness the employer's angry outbursts: his kicking shelves and throwing boxes of nails and tools.

But, according to the Employment Security Department, and Division II in this case, based upon *Starr v. Employment Security Department,* 130 Wn. App. 541, 123 P.3d 513 (2005), *rev. denied,* 157 Wn.2d 1019 (2006), Sara Spain did not have good cause to quit. The reason: quitting due to an abusive employer is not on the

finite, exclusive list of "good causes." However, because the *Batey* case invalidates those provisions upon which *Starr* and the Court of Appeals in Ms. Spain's case rested, this case must be analyzed under the statute as it existed prior to the 2003 amendments. *See, Batey,* 137 Wn. App. at 515.

Prior to the 2003 amendments, outrageous, abusive behavior by one's employer had historically been held by the ESD and the courts to constitute good cause to quit and good cause to qualify for unemployment benefits. This was true then, as now, in part because the Employment Security Act provides benefits, as its preamble states, to those workers who are out of work *"through no fault of their own."* RCW 50.01.010 (emphasis added).

Further, the Act's provisions that disqualify claimants from benefits for leaving jobs "voluntarily without good cause" make at least four exceptions for claims filed ***prior to*** January 4, 2004.[6]

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[6] *(b) An individual shall not be considered to have left work voluntarily without good cause when:*

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family...

(iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer...

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, . . .

RCW 50.20.050 (1)(b)(i)-(iv).

In interpreting "good cause" under these provisions, the statute provided this additional guidance:

> (c) In determining under this subsection whether an individual has left work voluntarily without good cause, . . . ***Good cause shall not be established*** . . . because of any other significant work factor which was generally known and present at the time he or she accepted employment, ***unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship*** on the individual were he or she required to continue in the employment.

RCW 50.20.050(1)(c)(emphasis added).

The four reasons enumerated in the statute (see nt. 6 *supra*) were ***never*** interpreted as an "exclusive list." *See, e.g., Ayers v. Employment Security Department,* 85 Wn.2d 550, 536 P.2d 610 (1975); *G & G Electric v. Employment Security Department,* 59 Wn. App. 410, 793 P.2d 987 (1990); *Hussa v. Employment Security Department,* 34 Wn. App. 857, 664 P.2d 1286 (1983); *Vergeyle v. Employment Security Department,* 28 Wn. App. 399, 623 P.2d 736 (1981); *Coleman v. Employment Security Department,* 25 Wn. App. 405, 607 P.2d 1231 (1980).

Therefore, as discussed more fully in Ms. Spain's prior briefing in this case, the ESD's decisions prior to 2004 consistently held that workers facing abuse at their worksite demonstrated

"good cause to quit." *See, e.g., In re Pischel,* Comm'r Dec 2d Series 672 (1981) (claimant had good cause to quit when "the plant manager behaved in a belligerent and overbearing manner toward" the claimant); *In re Groth*, Comm'r Dec. 343 (1957) (claimant had good cause to quit when on one occasion he "was subjected to *intentional profanity* by his immediate superior thereby giving rise to *complete justification* for leaving the job without further discussion with his employer."); *In re Simpson*, Comm'r Dec. 513 (1962) (claimant had good cause to quit arising from a single incident of disrespectful behavior and profanity).

Ms. Spain's case is analogous to each of these three cases, and the facts in Ms. Spain's case are even more egregious. Ms. Spain suffered *ongoing* verbal abuse and *other harassment* from her employer, the owner of the company, of such a nature and over such a period of time with no change as to compel a reasonably prudent person to finally leave her job. Further, nothing changed in her job despite complaints to the owner about his behavior and his promises to change. Consequently, just as the claimants in *Pischel, Groth,* and *Simpson* qualified for benefits after quitting because of the verbal abuse they received at work, so should Ms.

Spain receive benefits because *Batey* returns us to the statute as it was written and interpreted prior to 2004.

C. MS. SPAIN SHOULD RECEIVE BENEFITS BECAUSE THE TRIAL COURT WAS CORRECT THAT THE LIST OF "GOOD CAUSES" IS NOT EXHAUSTIVE.

Alternatively, even if this Court does not affirm *Batey*, Ms. Spain should be eligible for benefits because she had "good cause" to quit even under the 2003 amendments. Those amendments did not establish an exhaustive, exclusive, finite "good cause" list for voluntarily quitting a job and Division II was therefore mistaken in *Starr v. Employment Security Department,* 130 Wn. App. 541, 123 P.3d 513 (2005), *rev. denied,* 157 Wn.2d 1019 (2006).

The ESD originally denied Ms. Spain benefits because she quit her job for a reason not included in the list of reasons for "good cause" to quit under RCW 50.20.050(2)(b). The Thurston County Superior Court reversed the denial, finding that the list in the statute was not exhaustive because the Legislature had retained the general "good cause" language in subsection (2)(a) of the statute.

The statute for claims arising ***after January 4, 2004***, and interpreted by Division II in *Starr,* reads as follows:

> (2) With respect to claims that have an effective date on or after January 4, 2004:

> (a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work ***voluntarily without good cause*** and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.
>
> * * *
>
> ***(b) An individual is not disqualified from benefits under (a) of this subsection when:***
>
> * * *

RCW 50.20.050(2)(b). Following subsection "b," the statute lists ten reasons for leaving work. RCW 50.20.50(2)(b)(i)-(x). Four of those reasons are the same, or similar, to the four reasons taken from the prior statute and applied to claims arising before January 4, 2004 (*see, supra* nt. 6). The four reasons in the prior statute had never been interpreted to be an exhaustive list and were introduced by nearly identical language to that in (2)(b) above.

Only after the legislature amended the statute for claims filed in or after 2004 did the Employment Security Department begin to construe the language of 2(b) as setting up an exclusive list. The *Starr* decision holds the language of 2(b) is so "plain" as to admit to no other interpretation except "exclusivity," but relies on an *inference* from that language rather than the language itself:

> [B]ecause the Legislature specified in section (2)(b) ten circumstances that will not disqualify an individual from unemployment benefits under section (2)(a), ***we infer that RCW 50.20.050(2)(b) comprises the Legislature's exclusive list of circumstances*** that will not defeat a claim for unemployment compensation when a worker voluntarily quits employment.

Starr, 130 Wn. App. at 549.

But this opinion fails to explain why the nearly identical language of 1(b) had never been interpreted to have – **by inference** - set up an exclusive list prior to 2004. Therefore, because the "plain language" of 1(b) was never interpreted to set up an exclusive list, neither should the "plain language" of 2(b) be interpreted to set up an exclusive list.

VI. CONCLUSION

Ms. Spain asks this Court to reverse the decision of the Court of Appeals in this case and remand it to the Commissioner for an award of unemployment benefits under RCW 50.20.050. Ms. Spain also asks this court to award a reasonable attorney's fee under RCW 50.32.160.

Dated this 8th day of February 2008.

Respectfully submitted,

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IN THE SUPREME COURT

FOR THE STATE OF WASHINGTON

SARA D. SPAIN, Petitioner, and STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT, Respondent.	**Consolidated under Supreme Court Case No. 79878-8** **CERTIFICATE OF SERVICE BY MAIL**

CERTIFICATE

I certify that I emailed a copy of the Petitioner Sara Spain's Supplemental Brief in this matter and mailed a print copy postage prepaid, on February 8, 2008, to:

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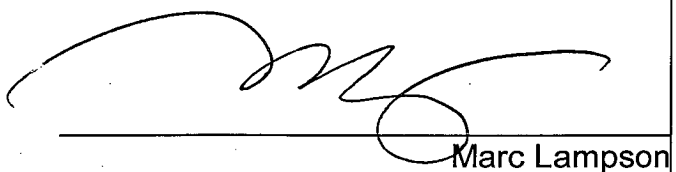

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Appendix A - Court of Appeals Decision Under Review

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SARA D. SPAIN, Respondent, v. STATE OF WASHINGTON EMPLOYMENT SECURITY DEPARTMENT, Appellant.	No. 33705-3-II UNPUBLISHED OPINION

PENOYAR, J. — The Employment Security Department (ESD) appeals a Thurston County Superior Court order reversing a decision by the ESD commissioner.[1] The commissioner denied Sara Spain unemployment benefits, finding that she voluntarily quit her job without good cause as contemplated by RCW 50.20.050. The superior court reversed that decision, holding that RCW 50.20.050(2)(b) does not provide an exclusive list of "good cause" reasons for leaving employment. We agree that the superior court erred and reinstate the commissioner's decision.

[1] A commissioner of this court reviewed this matter pursuant to the court's own motion on the merits and referred it to a panel of judges. See RAP 18.14.

Spain worked for Peterson Northwest, Inc., a roofing company, from February 6 to June 18, 2004. She asserted that she quit because of her employer's verbal abuse and "mind games." Commissioner's Record (CR) at 10, 13. The ESD denied benefits, and Spain appealed. An ESD administrative law judge found that the employer's behavior was unprofessional, demeaning, and unjustified, but that it did not constitute good cause for quitting under the statute. The ESD commissioner affirmed that decision, but the superior court reversed.

Spain argues that the lower court was correct because (1) RCW 50.20.050 has been consistently interpreted to allow for unemployment benefits when a compelling personal reason forces a claimant to quit his or her job; (2) RCW 50.20.050(2)(b) is not an exhaustive list of "good cause" reasons for leaving a job; and (3) the liberal interpretation to be accorded to claimants under the Employment Security Act mandates that she be found eligible for benefits.

This court considered these arguments in *Starr v. Employment Sec. Dep't* and determined that cases addressing earlier versions of the statute are inapposite. RCW 50.20.050(2)(b)(i)-(x) does, in fact, provide the exclusive list of non-disqualifying good cause reasons for quitting employment. And, because the statute is unambiguous, there is no room for liberal construction. *See* 130 Wn. App. 541, 550-51, 123 P.3d 513 (2005), *review denied*, 157 Wn.2d 1019 (2006).

The superior court's decision is reversed. We reinstate the commissioner's decision and deny Spain's request for attorney fees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

PENOYAR, J.

We concur:

VAN DEREN, A.C.J.

BRIDGEWATER, J.

Appendix B - Trial Court Decision

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

SARA D. SPAIN, Petitioner, v. EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF WASHINGTON, Respondent	NO. 04-2-02246-8 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REMANDING

This matter came on regularly for hearing on August 5, 2005, pursuant to the Washington Administrative Procedure Act. ROB McKENNA, Attorney General, and JAMIE N. JONES, Assistant Attorney General represented respondent Employment Security Department and petitioner SARA D. SPAIN was represented by MARC LAMPSON. The Court, having reviewed the Commissioner's Record, pleadings and briefs on file, and having heard arguments, and in all premises being fully advised, hereby makes the following:

I. FINDINGS OF FACT

1.1 The Decision of Commissioner under review is the final order of an administrative agency in an adjudicative proceeding.

ATTORNEY GENERAL OF WASHINGTON
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Olympia, WA 98504-0110
(360) 664-2405

1.2 Petitioner timely filed a petition for judicial review with this court and served copies on all parties of record, the Employment Security Department and the Office of the Attorney General.

1.3 The only record being considered by the court is the Commissioner's Record in this case. No testimony has been taken by the court.

1.4 The Commissioner's delegate found that the Petitioner was able to, available for, and actively seeking work during the weeks at issue as required by RCW 50.20.010(1)(c).

1.5 The Commissioner's delegate concluded that the ten item list set forth in RCW 50.20.050(2)(b) constitutes an exclusive/exhaustive list of circumstances that constitute statutory good cause for quitting employment.

1.6 The Commissioner's delegate found that the record does not establish: (1) that there was any illegal activity at the workplace that (2) was reported to the employer and (3) which the employer failed to end.

1.7 The Commissioner's delegate held that the petitioner was disqualified from receiving unemployment benefits pursuant to RCW 50.20.050(2)(a) beginning June 13, 2004, and thereafter for seven calendar weeks and until she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times her weekly benefit amount.

II. CONCLUSIONS OF LAW

2.1 The Court has jurisdiction over the parties and subject matter.

2.2 Venue is proper pursuant to RCW 34.05.514(1)(a).

2.3 The Petitioner was able to, available for, and actively seeking work during the weeks at issue as required by RCW 50.20.010(1)(c).

2.4 The Commissioner's finding that "the record does not establish that (1) there was any illegal activity at the workplace that (2) was reported to the employer and (3) which

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the employer failed to end" is supported by substantial evidence.

2.5 The Commissioner properly concluded that the petitioner did not meet any of the reasons for quitting set forth in RCW 50.20.050(2)(b). The findings underlying that determination were supported by substantial evidence and the application of the law to those findings was not erroneous.

2.6 In the decision below, the Commissioner's delegate erroneously interpreted RCW 50.20.050(2). The Legislature intended to make the ten item list set forth in RCW 50.20.050(2)(b) exhaustive in order to remove discretion from the Administrative Law Judges, the Commissioner, and reviewing courts. However, in retaining the term "good cause" in RCW 50.20.050(2)(a), the Legislature failed to accomplish its purpose in the language of the amendments. Thus, a claimant can now qualify for benefits in one of two ways: (1) by establishing that he quit due to one of the ten factors set forth in RCW 50.20.050(2)(b), or (2) by establishing that he had "good cause" under RCW 50.20.050(2)(a). The term "good cause" in RCW 50.20.050(2)(a) has no statutory definition. RCW 50.20.050(1)(c) previously provided some guidance for the term "good cause," but has been deleted from the statute.

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2.7 The court awards reasonable attorney fees & costs to the petitioner in an amount to be determined by affidavit & cost bill to be filed subsequent to this order.

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Based on the Findings of Fact and Conclusions of Law, the Court enters the following:

III. ORDER

IT IS HEREBY ORDERED that ~~the above-entitled matter~~ is reversed and this matter is remanded to the Review Office of the Commissioner of the Employment Security Department. The Commissioner is directed to rule on whether the petitioner's reason for quitting constituted "good cause" under RCW 50.20.050(2)(a).

DATED this 5th day of August, 2005.

JUDGE CASEY

that The Commissioner's Order that RCW 50.20.050(2)(a) is exhaustive is reversed;

Presented by:
ROB McKENNA
Attorney General

Jamie N. Jones,
WSBA No. 34329
Assistant Attorney General
Attorney for Respondent

Approved as to form:

Marc Lampson
WSBA No. 14998
Attorney for Petitioner

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Appendix C - HB 3278

BILL REQ. #: H-4741.1

HOUSE BILL 3278

State of Washington **59th Legislature** **2006 Regular Session**

By Representatives Conway and Dickerson

Read first time 01/31/2006. Referred to Committee on Commerce & Labor.

AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1** The legislature finds that it is in the best interest of unemployed workers, businesses, and the state to maintain a stable and solvent unemployment insurance system. The legislature intends to make adjustments to benefit and tax equity that ensure both the stability and solvency of the system.

--- END ---

Appendix D - H. Amend. 939

3278 AMH CONW REIN 274

HB 3278 - H AMD 939
By Representative Conway

ADOPTED 2/14/2006

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature hereby recognizes that the joint legislative task force on **unemployment insurance benefit equity** has undertaken a comprehensive review of the unemployment insurance system, but has not yet reached agreement on its findings and recommendations. The legislature therefore intends to extend the deadline by which the task force must report to the legislature.

Sec. 2. 2005 c 133 s 9 (uncodified) is amended to read as follows:

(1)(a) The joint legislative task force on **unemployment insurance benefit equity** is established. The joint legislative task force shall consist of the following members:

(i) The chair and ranking minority member of the senate labor, commerce, research and development committee;

(ii) The chair and ranking minority member of the house commerce and labor committee;

(iii) Four members representing business, selected from nominations submitted by statewide business organizations representing a cross-section of industries and appointed jointly by the president of the senate and the speaker of the house of representatives; and

(iv) Four members representing labor, selected from nominations submitted by statewide labor organizations representing a cross-section of industries and appointed jointly by the president of the senate and the speaker of the house of representatives.

(b) In addition, the employment security department shall cooperate with the task force and maintain a liaison representative, who shall be a nonvoting member. The department shall cooperate with

the task force and provide information as the task force may reasonably request.

(2) The task force shall review the unemployment insurance system, including, but not limited to, whether the benefit structure provides for equitable benefits, whether the structure fairly accounts for changes in the work force and industry work patterns, including seasonality, and for claimants' annual work patterns, whether the tax structure provides for an equitable distribution of taxes, and whether the trust fund is adequate in the long term.

(3)(a) The task force shall use legislative facilities, and staff support shall be provided by senate committee services and the house of representatives office of program research. The task force may hire additional staff with specific technical expertise if such expertise is necessary to carry out the mandates of this study.

(b) Legislative members of the task force shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(c) The expenses of the task force shall be paid jointly by the senate and the house of representatives.

(5) The task force shall report its findings and recommendations to the legislature by ((~~January~~)) March 1, 2006.

(6) This section expires July 1, 2006."

EFFECT: Extends the deadline by which the Joint Legislative Task Force on **Unemployment Insurance Benefit Equity** must report to the Legislature from January 1, 2006, to March 1, 2006.

Appendix E - EHB 3278 (House Version)

ENGROSSED HOUSE BILL 3278

State of Washington **59th Legislature** **2006 Regular Session**

By Representatives Conway and Dickerson

Read first time 01/31/2006. Referred to Committee on Commerce & Labor.

AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity; amending 2005 c 133 s 9 (uncodified); and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1** The legislature hereby recognizes that the **joint legislative task force** on **unemployment insurance benefit equity** has undertaken a comprehensive review of the unemployment insurance system, but has not yet reached agreement on its findings and recommendations. The legislature therefore intends to extend the deadline by which the task force must report to the legislature.

Sec. 2 2005 c 133 s 9 (uncodified) is amended to read as follows:
(1)(a) The **joint legislative task force** on **unemployment insurance benefit equity** is established. The **joint legislative task force** shall consist of the following members:
(i) The chair and ranking minority member of the senate labor, commerce, research and development committee;
(ii) The chair and ranking minority member of the house commerce and labor committee;
(iii) Four members representing business, selected from nominations submitted by statewide business organizations representing a cross-section of industries and appointed jointly by the president of the senate and the speaker of the house of representatives; and
(iv) Four members representing labor, selected from nominations submitted by statewide labor organizations representing a cross-section of industries and appointed jointly by the president of the senate and the speaker of the house of representatives.
(b) In addition, the employment security department shall cooperate with the task force and maintain a liaison representative, who shall be a nonvoting member. The department shall cooperate with the task force and provide information as the task force may reasonably request.
(2) The task force shall review the unemployment insurance system, including, but not limited to, whether the benefit structure provides for equitable benefits, whether the structure fairly accounts for changes in the work force and industry work patterns, including seasonality, and for claimants' annual work patterns, whether the tax structure provides for an equitable distribution of taxes, and whether the trust fund is adequate in the long term.
(3)(a) The task force shall use legislative facilities, and staff support shall be provided by senate committee services and the house of representatives office of program research. The task force may hire additional staff with specific technical expertise if such expertise is necessary to carry out the mandates of this study.
(b) Legislative members of the task force shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(c) The expenses of the task force shall be paid jointly by the senate and the house of representatives.
((~~(5)~~)) (4) The task force shall report its findings and recommendations to the legislature by ((~~January~~)) March 1, 2006.
((~~(6)~~)) (5) This section expires July 1, 2006.

--- END ---

Appendix F - S. Amend. 365

3278.E AMS KOHL S5850.1

EHB 3278 - S AMD365
By Senators Kohl-Welles, Parlette

ADOPTED 03/03/2006

Strike everything after the enacting clause and insert the following:

"**Sec. 1** RCW 50.20.050 and 2003 2nd sp.s. c 4 s 4 are each reenacted to read as follows:
(1) With respect to claims that have an effective date before January 4, 2004:
(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.
The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:
(i) The duration of the work;
(ii) The extent of direction and control by the employer over the work; and
(iii) The level of skill required for the work in light of the individual's training and experience.
(b) An individual shall not be considered to have left work voluntarily without good cause when:
(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
(ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;
(iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or
(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.
(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.
(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible

for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) Is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

NEW SECTION. **Sec. 2** Section 1 of this act applies retroactively to claims that have an effective date on or after January 4, 2004."

EHB 3278 - S AMD
By Senators Kohl-Welles, Parlette

ADOPTED 03/03/2006

On page 1, line 2 of the title, after "equity;" strike the remainder of the title and insert "reenacting RCW 50.20.050; and creating a new section."

EFFECT: Reenacts, retroactively, the "good cause quit" section of Second Engrossed Senate Bill No. 6097 (a section that was potentially under challenge in Batey v. Employment Security Department).

--- END ---

Appendix G - EHB 3278, as signed March 8, 2006

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 3278

Chapter 12, Laws of 2006

59th Legislature
2006 Regular Session

UNEMPLOYMENT INSURANCE--DISQUALIFICATION

EFFECTIVE DATE: 6/07/06

Passed by the House March 3, 2006
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 3, 2006
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 8, 2006.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 3278** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED
March 8, 2006 - 2:20 p.m.

Secretary of State
State of Washington

ENGROSSED HOUSE BILL 3278

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

State of Washington **59th Legislature** **2006 Regular Session**

By Representatives Conway and Dickerson

Read first time 01/31/2006. Referred to Committee on Commerce & Labor.

AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity; reenacting RCW 50.20.050; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1 RCW 50.20.050 and 2003 2nd sp.s. c 4 s 4 are each reenacted to read as follows:
(1) With respect to claims that have an effective date before January 4, 2004:
(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.
The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:
(i) The duration of the work;
(ii) The extent of direction and control by the employer over the work; and
(iii) The level of skill required for the work in light of the individual's training and experience.
(b) An individual shall not be considered to have left work voluntarily without good cause when:
(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
(ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;
(iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or
(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.
(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the

individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in.the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) Is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;
(vi) The individual's usual hours were reduced by twenty-five percent or more;
(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;
(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;
(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or
(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

NEW SECTION. **Sec. 2** Section 1 of this act applies retroactively to claims that have an effective date on or after January 4, 2004.

Passed by the House March 3, 2006.
Passed by the Senate March 3, 2006.
Approved by the Governor March 8, 2006.
Filed in Office of Secretary of State March 8, 2006.